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## **U.S. Wins WTO Case on Sea Turtle Conservation**

### *Ruling Reaffirms WTO Recognition of Environmental Concerns*

WASHINGTON—The World Trade Organization (WTO) Appellate Body today released a report finding that the United States' implementation of its sea turtle protection law is fully consistent with WTO rules and complies with earlier recommendations of the Appellate Body. Malaysia, along with three other countries, had brought an initial challenge to the law (known as the "shrimp-turtle" law) in 1996. In the latest phase of the case, Malaysia challenged the United States' compliance with the earlier Appellate Body report. Today's report upholds the conclusions of a WTO panel in June, which found that the United States had complied.

"Today's Appellate Body report confirms that our sea turtle conservation law is consistent with WTO rules, and more generally, shows that the WTO as an institution recognizes the legitimate environmental concerns of its Members," said U.S. Trade Representative Robert B. Zoellick. The preamble to the WTO Agreement recognizes the importance of sustainable development and environmental protection.

The U.S. law restricts imports of shrimp caught in a way that harms endangered sea turtles. In a 1998 report, the Appellate Body agreed with the United States that the law does not violate WTO obligations because it is covered by an exception to WTO rules for measures relating to the conservation of exhaustible natural resources. However, the Appellate Body found that the United States had unjustifiably discriminated among exporting countries in applying the law. The United States complied with the Appellate Body findings by modifying implementation of its law in a manner that both enhanced sea turtle conservation and addressed the unfair discrimination identified by the Appellate Body.

In the report released today, the Appellate Body agreed with the June 2001 panel report and the United States that the U.S. implementation steps had remedied any unfair discrimination. The Appellate Body took note of the revisions to the shrimp-turtle guidelines that provide more due process to

exporting nations. The Appellate Body also recognized the good faith efforts of the United States to negotiate a sea turtle conservation agreement with the Indian Ocean and South-East Asian nations affected by the law.

### **Background:**

Sea turtles are an ancient and far-ranging species, with migratory patterns extending throughout the oceans of the world. Due to the harvesting of sea turtles and their eggs and to accidental mortality associated with shrimp trawling and other fishing operations, all but one species of sea turtles have become threatened or endangered with extinction throughout all or part of their range.

Researchers have developed special equipment, known as the Turtle Excluder Device, or TED, that virtually eliminates accidental deaths of sea turtles in shrimp trawl nets. For more than a decade, the United States has required that U.S. shrimp fishermen employ TEDs. Over a dozen countries around the globe also require that their shrimp trawlers employ TEDs. Experience has shown that the use of TEDs, combined with other elements of an integrated sea turtle conservation program, can stop the decline in sea turtle populations and will, over time, lead to their recovery.

The U.S. law at issue -- Section 609 of Public Law 101-162 -- restricts imports of shrimp harvested with fishing equipment, such as shrimp trawl nets not equipped with TEDs, that results in incidental sea turtle mortality. It thereby avoids further endangerment of sea turtles.

In October 1996, India, Malaysia, Thailand and Pakistan challenged the U.S. law under WTO dispute settlement procedures, claiming that it was inappropriate for the United States to prescribe their national conservation policies. In April 1998, a panel found that the U.S. measure was inconsistent with Article XI of the General Agreement on Tariffs and Trade (GATT), which provides that WTO Members shall not maintain import restrictions. The United States had maintained that Section 609 fell within the exception under Article XX(g) of the GATT that permits import restrictions relating to the conservation of an exhaustible natural resource. The United States appealed the panel findings to the WTO Appellate Body.

In October 1998, the Appellate Body reversed the findings of the dispute settlement panel. It agreed with the United States that the U.S. law is covered by the GATT exception for measures relating to the conservation of exhaustible natural resources, but found that the United States had implemented the law in a way that resulted in unfair discrimination between exporting nations. The Appellate Body also agreed with the United States that the GATT and all other WTO agreements must be read in light of the preamble to the WTO Agreement, which endorses sustainable development and environmental protection. The Appellate Body confirmed that WTO members may adopt environmental conservation measures such as the U.S. law, so long as they are administered in an even-handed manner and do not amount to disguised protectionism.

In November 1998, the United States announced that it would comply with the Appellate Body report in a manner consistent with its firm commitment to the protection of endangered sea turtles. The United States and the other parties to the dispute reached agreement on a 13-month compliance period, which

ended in December 1999.

U.S. compliance steps included revised Department of State guidelines for implementing Section 609, which were issued after providing notice and an opportunity for public comment. The revised guidelines were designed to increase the transparency and predictability of decisionmaking under Section 609 and to afford foreign governments a greater degree of due process.

U.S. compliance steps also included efforts to launch the negotiation of a sea turtle conservation agreement with the governments of the Indian Ocean region on the protection of sea turtles. The United States provided financial assistance to facilitate the attendance of representatives from developing countries at such negotiations, and considerable progress has been made. The United States has also offered technical training in the design, construction, installation and operation of TEDs to any government that requests it. Since the adoption of the Appellate Body report, the United States has provided such assistance and training to a number of governments and other organizations in the Indian Ocean and South East Asia region.

Despite the U.S. compliance steps, in October 2000, Malaysia – but none of the other original complainants – requested the re-establishment of the original panel to examine whether the United States had in fact complied with the Appellate Body findings. In June of this year, the panel found that the U.S. implementation of its sea turtle protection law is fully consistent with WTO rules and complies with the earlier recommendations of the WTO Appellate Body. Malaysia then appealed the panel's findings to the WTO Appellate Body.

The Appellate Body report will be posted on both USTR's website ([www.ustr.gov](http://www.ustr.gov)) and the WTO website ([www.wto.org](http://www.wto.org)). USTR's briefs in the case are available at [www.ustr.gov/enforcement/briefs](http://www.ustr.gov/enforcement/briefs).

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